IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.2150 OF 2002
and
WPMP.NO.27417 OF 2002

T. Venkatesan .. Petitioner

-Vs-

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Tahsildar,
Ambattur,
Thiruvallur District.

3. M/s. Sivanandha Steels Limited,
Plot Nos.18,19 & 20,
Industrial Estate, Ambattur,
Chennai 600 058. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.M. Rajaraman

For Respondents 1-2 : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

Respondent - 3 : Mr.G. Moorthy

:J U D G M E N T

The petitioner has prayed for issuing a Writ of Mandamus directing the respondents 1 and 2 to initiate further action under Section 9 of the Tamil Nadu Revenue Recovery Act, 1864, to recover a sum of Rs.80 ,979/- with interest at 10 per cent per annum from the third respondent.

2. The undisputed fats in brief are as follows:-

The petitioner was employed under the third respondent and ultimately retired from service in June 1999. The third respondent has not paid the

amount payable towards gratuity forcing the petitioner to file P.G. case No.146 of 2000 under Section 7 of Payment of Gratuity Act, 1972 before the Assistant Commissioner of Labour. By order dated 16-10-2000, the Assistant Commissioner of Labour issued a direction to the third respondent to pay a sum of Rs.80,979/- with interest at the rate of 10% per annum. However, since the amount remained unpaid, on the petition of the petitioner, the Assistant Commissioner issued a certificate under Section 8 of the Tamil Nadu Revenue Recovery Act for realisation of the amount. Since no action had been taken on the certificate by respondents 1 and 2, the petitioner has filed several applications before such authority. Subsequently, the petitioner was informed that the second respondent has been directed to recover the amount from the third respondent and thereafter a distraint order has been issued, but the amount is yet to be realised. The petitioner has filed this writ petition to take effective steps for realisation of the amount.

3. Counter affidavit has been filed on behalf of the third respondent wherein while denying the various allegations made, it was indicated that the matter is pending before B.I.F.R. under the Sick Industrial Companies (Special Provisions) Act, 1985 and in view of the provisions contained in Section 22 of the said Act, no coercive action should be taken without obtaining the leave from the Appellate Authority under the said Act.

4. Sections 22 (1) and (3), being relevant, are extracted hereunder :-

 22. Suspension of legal proceedings, contracts, etc.- (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Actor other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) . . . .

(3) Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements,

settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

5. While considering the scope of Section 22(1) the Supreme Court in the decision reported in A.I.R. 1990 SC 1017 (THE GRAM PANCHAYAT AND ANOTHER v. SHREE VALLABH GLASS WORKS LTD. AND OTHERS), has observed as follows :

. . . 7. Section 22(1) provides that in case the enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration by the Board or any appeal under Section 25 is pending then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended. The nature of the proceedings which are automatically suspended are: (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of sick industrial company and (3) Proceedings for the appointment of Receiver. The proceedings in respect of these matters could, however, be continued against the sick industrial company with the consent or approval of the Board or of the Appellate Authority as the case may be.

6. In 1993(II) SCC 144 (MAHARASHTRA TUBES LTD. v. STATE INDUSTRIAL & INVESTMENT CORPORATION OF MAHARASHTRA LTD. AND ANOTHER) it was observed thus :-

. . . The basic idea is to revive sick units, if necessary, by extending further financial assistance after a thorough examination of the units by experts and only when the unit is found to be no more capable of rehabilitation, that the option of winding up may be resorted to. It is for that reason that Section 22(1) provides that during the pendency of (i) an inquiry under Section 16 or (ii) preparation or consideration of a scheme under Section 17 or (iii) an appeal under Section 25, no proceedings for winding up of the concerned industrial company or for execution, distress or the like shall lie or be proceeded with in relation to the properties of that concern unless BIFR/ Appellate authority has consented thereto. The underlying idea is that every such action should be frozen unless expressly permitted by the specified authority until the investigation for the revival of the industrial undertaking is finally determined. It is thus crystal clear that the main thrust of this special legislation is at revival or rehabilitation of the sick industrial undertaking and it is only when it is realised that the same is not feasible that the option of winding up of the

unit can be resorted to. (emphasis supplied)

7. Subsequently in A.I.R. 1997 SC 2027 (DEPUTY COMMERCIAL TAX OFFICER AND OTHERS v. CORROMANDAL PHARMACEUTICALS AND OTHERS) it was observed as follows :-

. . . In order to see that the scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervision of the Board (BIFR). Any step for execution, distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. . . .

8. Thereafter in A.I.R. 1998 SC 2928 (TATA DAVY LTD., v. STATE OF ORISSA AND OTHERS), it was observed as follows :

11. The Vallabh Glass Works judgment covers there appeals. Arrears of taxes and the like due from sick industrial companies that satisfy the conditions set out in Section 22(1) of the Central Act cannot be recovered by coercive process unless the said Board gives its consent thereto.

12. The Central Act is enacted under Entry 52 of List of the Seventh Schedule. The said Entry 52 empowers Parliament to legislate in respect of Industries, the control of which by the Union is declared by Parliament by law to be in the public interest. The Central Act declares that it is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution, namely, that the ownership and control of the material resources of the community are so distributed as best to serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Central Act does not impair or interfere with the rights of the States to legislate with respect to sales tax under Entry 54 of List II of the Seventh Schedule. In the larger interest of the industrial health of the nation, Section 22 of the Central Act requires all creditors seeking to recover their dues from sick industrial companies in respect of whom an inquiry under Section 16 is pending or a scheme is under preparation or consideration or has been sanctioned to obtain the consent of the said Board to such recovery. If such consent is not secured and the recovery deferred, the creditors remedy is protected for the period of deferment is, by reason of sub-section (5) of Section 22, excluded in the

computation of the period of limitation. The words any other law in Section 22 cannot, therefore, be read in the manner suggested by learned counsel for the respondents.

13. The Corromandal Pharmaceuticals judgment (1997 AIR SCW 1816)

dealt with a sick industrial company which was enabled to collect amounts like sales tax after the date of the sanctioned scheme. This Court said, "such amounts like sales tax, etc. which the sick industrial company is enabled to collect after the date of the sanctioned scheme, legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act". It added that the issue that had been arisen before it had not arisen in the case of Vallabh Glass Works AIR 1990 SC 1017. It did not appear therefrom or from any other decision of this Court or of the High Courts " that in any one of them, the liability of the sick company dealt with therein itself arose for the first time after the date of sanctioned scheme. At any rate, in none of these cases a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the sanctioned scheme but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery had to be taken". Clearly, the facts in the Corromandal Pharmaceuticals case differ from the facts of the Vallabh Glass Works case and those before us. The reference to the Corromondal Pharmaceuticals case is, therefore, in apposite.

14. We hold, in the premises, that the respondents cannot recover the aforementioned arrears of sales tax from the appellants without first seeking the consent of the said Board in this behalf."

9. While considering the question of applicability of Section 22 in matter relating to realisation of dues under the Employees" Provident Fund and Miscellaneous Provisions Act, 1952, a learned single Judge of this Court relying upon the aforesaid decisions, held that no such proceedings for execution, distress or the like can be taken without the consent of the Board. The aforesaid decision of the learned single Judge was approved by the Division Bench in Writ Appeal No.1831/2001 dated 2.11.2001.

10. Subsequently, by order dated 18-9-2002 in W.P.No.8294/2002, in a matter relating to payment of gratuity, the learned Judge of this Court again followed the aforesaid decision in the writ appeal and has observed that without the consent of the Board no such proceedings can be continued.

11. The learned counsel appearing for the petitioner has however relying upon several decisions contended that Section 22 of the Act is not intended to stall the proceedings relating to the realisation of the dues of a workman. He has particularly placed reliance upon the following decisions in support of his content ion :-

1. MODI INDUSTRIES LTD v. ADDL. LABOUR COMMISSIONER (1994 LAB. I.C 1609 (ALL.)

2. BABURAO P. TAWADE & OTHERS v. HES LTD. & ANOTHER (1995 LAB I.C. 2200 (BOM).

3. RAJNAGAR TEXTILES MILLS NO.1 v. TEXTILE LABOUR ASSOCIATION (1998(63) COMP. CASES 448 (GUJ)

4. ALLWYN, UNIT OF VOLTAS LTD & OTHERS v. DEPUTY LABOUR COMMISSIONER AND OTHERS (2000(100) COMP. CASES 694 (MP)

5. CARONA LIMITED v. SITARAM ALMARAM CHAG & OTHERS (2000 LAB I.C. 280)

6. RALLIWOLF LTD v. REGIONAL PROVIDENT FUND COMMISSIONER-I, THANE AND OTHERS (2001 LAB I.C. 1815)

7. KEDIA DISTILLERIES LTD., INDORE v. GENERAL SECRETARY, CHHATISGARH CHEMICAL MILL MAJDOOR SANGH & OTHER (2001 LAB I.C. 1815)

8. DUTTATRAYA LAKMAN KULKARNI v. M/s. AURANGABAD PAPER MILLS LTD.(2001 LAB I.C. 2998)

9. INDUSTRIAL DEVELOPMENT CORPORATION ORISSA LTD. v. REGIONAL PROVIDENT FUND COMMISSIONER-II AND ANOTHER (2001 LAB I.C. 3821)

12. The aforesaid decisions, no doubt, support the contentions of the petitioner. However, in view of the various decisions of the Supreme Court which have already been noticed and analyzed, particularly in view of the fact that the earlier decision of this Court in W.P. No.19442 of 1999 dated 10.2.2000, which has been confirmed by the Division Bench in Writ Appeal No.1831 of 2000 dated 2.11.2001 and particularly in view of the subsequent decision of the learned single Judge in W.P.NO.8294 of 2002, which is directly on the point, I am unable to accept the decisions relied upon by the learned counsel for the petitioner.

13. In such view of the matter, directions sought for by the petitioner cannot be issued. However, it is made clear that the respondents 1 and 2 may take steps for filing appropriate application before the Board under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The writ petition is accordingly disposed of subject to the aforesaid observation. No costs. Consequently, WPMP. NO.27417 of 2002 is closed.

Index : Yes
Internet : Yes
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To

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Tahsildar,
Ambattur,
Thiruvallur District.

3. M/s. Sivanandha Steels Limited,
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